

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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In the matter of:

Trademark Capital Management, LLC, an
Arizona limited liability company;

Blue Investments, LLC, an Arizona limited
liability company;

Travis Richey and Melissa Boyd, Husband and
Wife;

Respondents.

DOCKET NO. S-20603A-08-0370

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

Arizona Corporation Commission

DOCKETED

JUL 23 2008

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NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Trademark Capital Management, LLC ("TCM"), Blue Investments, LLC ("BLUE") and Travis Richey ("RICHEY") are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Travis A. Richey ("RICHEY") is an individual residing in Maricopa County, Arizona.

3. Trademark Capital Management, LLC ("TCM") is a limited liability company formed in Arizona with its principal place of business in Phoenix, Arizona.

4. Blue Investments, LLC ("BLUE") is a limited liability company formed in Arizona with its principal place of business in Phoenix, Arizona.

5. Pursuant to public records of the Commission, RICHEY is the Managing Member of TCM and BLUE and in these capacities, RICHEY promotes, controls, and bears responsibility for TCM's and BLUE's business and financial affairs, and its investor solicitation activities.

6. TCM, BLUE, and RICHEY may be referred to individually or collectively as "Respondents," as the context so requires.

7. RICHEY and MELISSA BOYD ("M. BOYD") were married on May 23, 2008. M. BOYD may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

8. From at least May 23, 2008 to the present, RICHEY has been acting for his own benefit and for the benefit or in furtherance of the marital community.

III.

FACTS

TCM UNSECURED NOTE OFFERING

9. TCM publicly offered unregistered securities in the form of note(s) to at least one Potential Arizona Investor ("PAI").

10. As of May 13, 2008, TCM's website solicited the general public, including the PAI, by providing on its website under an Investment tab, among other things, as follows:

"[...]. WE ARE **OFFERING UNSECURED NOTES WITH 24-MONTH TERMS BEARING AN ANNUAL PERCENTAGE RATE OF 24% ("APR").** INTEREST WILL BE PAID MONTHLY OR QUARTERLY AS ELECTED BY INVESTOR. THERE IS NO AGGREGATE OFFERING LIMIT UNDER THIS OFFERING. [...]." (bold emphasis added)

11. TCM's website at <http://www.trademarkcapitalmanagement.com/> was still available on the internet, as of May 13, 2008, for all internet users to view the unsecured notes solicitation and investment description, without password protection or restricted access.

12. On or about early May 2008, RICHEY had offered, in person, unsecured note(s) to a PAI in Maricopa County, Arizona.

13. Respondent Trademark Capital Management LLC has a name closely similar to Trademark Capital Management Inc. ("Inc."), which is located in Florida, manages a fund with assets in excess of \$25,000,000 and has a website www.trademarkcapital.com offering services similar to TCM; however, Inc. is not affiliated or associated with Respondent TCM or RICHEY in any personal or professional manner.

BLUE PROMISSORY NOTE OFFERING

14. On or about April 22, 2008 RICHEY, on behalf of BLUE, offered and sold unregistered securities in the form of a note, which was labeled as a promissory note on the executed document, to at least one PAI in Maricopa County, Arizona.

15. The note was offered and executed by RICHEY as managing member, on behalf of BLUE.

1 16. The note stated it would pay 48% annual interest, with interest to be paid quarterly
2 and a minimum one year commitment.

3 17. RICHEY represented that the PAI monies received would be pooled and then
4 submitted to a bank, then the bank would use the monies as collateral to borrow from the Federal
5 Reserve, up to ten times (10x) the PAI amounts pooled and submitted to the bank.

6 18. RICHEY represented that the money borrowed by the bank through the Federal
7 Reserve would allow the bank to conduct its business and lending operations to obtain high returns
8 and this allowed the bank to pay Respondents and the PAI their stated fees and returns
9 respectively.

10 19. RICHEY represented that the note investment and payments are safe and that the
11 only risk of loss is if the bank were to go bankrupt. The solicitation materials failed to disclose all
12 material risks associated with each investment, including but not limited to, the fact that a PAI
13 could lose all or a large portion of their principal investment.

14 20. At least two PAIs invested at least \$245,000 with Respondents, BLUE and
15 RICHEY, in the form of a note.

16 HEDGE FUND AND SHELF CORPORATION INVESTMENT PROGRAM OFFERING

17 21. From on or about February 6, 2008 Respondents publicly offered unregistered
18 securities in the form of investment contracts, to at least one PAI in Maricopa County, Arizona.

19 22. On or about February 6, 2008 Respondents presented two (2) opportunities to the
20 PAI to invest their monies with Respondents to obtain a return based on their investment
21 management and efforts.

22 23. The first investment opportunity described was a direct investment by the PAI with
23 the PAI's own money into what Respondents commonly referred to as a "Hedge Fund" that they
24 represented they managed and that had assets of approximately \$117,000,000.

25 24. The PAI who invests into the Hedge Fund would obtain a return based on the
26 profitability and growth of the fund under Respondent's management and control; however,

1 Respondents do not manage a fund with assets of approximately \$117,000,000 or any value close
2 to it.

3 25. Respondents also presented a second investment opportunity, when they represented
4 to a PAI that he could obtain borrowed money for the PAI to invest into Respondent's Hedge Fund
5 by following the multi-step program which was to (a) purchase a "Shelf Corporation" from
6 Respondents (b) obtain an unsecured, revolving line of credit through the Shelf Corporation with
7 Respondent's aid and connections and (c) invest the monies received from the line of credit in
8 Respondent's Hedge Fund, to secure a profit and stated return resulting from Respondent's
9 management and efforts.

10 26. In describing the first phase of the multi-step program to obtain borrowed money to
11 invest, Respondents represented that a Shelf Corporation is a corporation that usually is only
12 established in name, has no assets or liabilities, kept for a certain period of time to give the
13 appearance of business history, and is available for immediate purchase.

14 27. Respondents also represented that, among other things:

15 a) They have Shelf Corporations that is aged 10 years; however all LLC filings
16 with the Commission reveals that the oldest LLC that Respondents own or are a member of is one
17 from 2005;

18 b) That purchasing a Shelf Corporation would grant the PAI access to
19 investment capital;

20 c) That they have relationships with reputable, long established lenders such as
21 Bank of America, Washington Mutual, Chase, and Wachovia;

22 d) That approval of a credit line from lenders would be obtained within 45 days
23 from the purchase date of a Shelf Corporation; and

24 e) That they are currently acquiring unsecured and revolving lines of credit
25 ranging from approximately \$500,000 to \$2,000,000, with no personal guarantees needed, from the
26 above lenders.

30. Respondents represented to at least one PAI that RICHEY holds a National Association of Securities Dealers (“NASD¹”) Series 6 Investment Company Products & Variable Contracts Representative, NASD Series 7 General Securities Representative, and NASD Series 63 Uniform Securities Agent State Law brokerage licenses. However, RICHEY does not hold any of the above licenses.

18 32. At all times relevant, Respondents were not registered dealers or salesmen with the
19 Commission.

VIOLATION OF A.R.S. § 44-1841

23 33. From on or about February 6, 2008, Respondents offered or sold securities in the
24 form of note(s) and investment contract(s) within or from Arizona.

6

35. This conduct violates A.R.S. § 44-1841.

VIOLATION OF A.R.S. § 44-1842

36. Respondents offered or sold securities within or from Arizona while not registered as
or salesmen pursuant to Article 9 of the Securities Act.

VI.

(Fraud in Connection with the Offer or Sale of Securities)

a) Misrepresented that they have a Hedge Fund with assets of approximately under management; however, Respondents do not manage a fund with assets of \$117,000,000 or any value close to it;

7

d) Misrepresented to at least one PAI that RICHEY holds a National Association of Securities Dealers (“NASD”) Series 6 Investment Company Products & Variable Contracts Representative, NASD Series 7 General Securities Representative, and NASD Series 63 Uniform Securities Agent State Law brokerage licenses. However, RICHEY does not hold any of the above licenses.

10 VII.

11 **TEMPORARY ORDER**

Cease and Desist from Violating the Securities Act

13 THEREFORE, based on the above allegations, and because the Commission has determined
14 that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondents, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with Respondents CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

21 IT IS FURTHER ORDERED that this Order shall be effective immediately.

22 VIII.

23 REQUESTED RELIEF

24 The Division requests that the Commission grant the following relief:

25 1. Order Respondents to permanently cease and desist from violating the Securities
26 Act, pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of Respondent RICHEY and Respondent Spouse Jane Doe are subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If a Respondent or Respondent Spouse requests a hearing, the requesting Respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting Respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

1 If a request for hearing is not timely made, the Division will request that the Commission
2 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
3 may include ordering restitution, assessing administrative penalties, or other relief.

4 Persons with a disability may request a reasonable accommodation such as a sign language
5 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
6 ADA Coordinator, voice phone number (602) 542-3931, e-mail lhogan@azcc.gov. Requests
7 should be made as early as possible to allow time to arrange the accommodation.

8 **X.**

9 **ANSWER REQUIREMENT**

10 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing,
11 the requesting Respondent must deliver or mail an Answer to this Temporary Order and Notice to
12 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
13 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.
14 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
15 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

16 Additionally, the answering Respondent must serve the Answer upon the Division.
17 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
18 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
19 Arizona, 85007, addressed to Phong (Paul) Huynh.

20 The Answer shall contain an admission or denial of each allegation in this Temporary
21 Order and Notice and the original signature of the answering Respondent or the Respondent's
22 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
23 of an allegation. An allegation not denied shall be considered admitted.

24 When the answering Respondent intends in good faith to deny only a part or a qualification
25 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
26 admit the remainder. Respondent waives any affirmative defense not raised in the answer.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 22nd day of July, 2008.

PTH/MB